

STATE OF MICHIGAN
COURT OF APPEALS

PETER LANING and ADRIANNA MAY
LANING,

UNPUBLISHED
March 23, 2006

Plaintiffs-Appellants,

V

CF FICK & SONS, INC.,

No. 255047
Crawford Circuit Court
LC No. 03-006060-NO

Defendant-Appellee.

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of the circuit court granting summary disposition in favor of defendant in this premises liability case. On appeal, plaintiffs argue that summary disposition was improperly granted because the trial court erroneously determined that the allegedly hazardous condition presented by a single step located at an interior doorway was open and obvious. We affirm. This appeal is being decided without oral argument, pursuant to MCR 7.214(E).

On May 1, 2000, plaintiff Peter A. Laning (P. A. Laning) and his son Peter (P. K. Laning) visited defendant's business premises to inquire about opening a business account. This was the first time that plaintiff P. A. Laning had been to this location. Defendant's salesman came to greet the Lanings and subsequently escorted them through defendant's "reception/showroom" area, down the step in issue, and into a hallway leading to a sales office. En route to the sales office, the Lanings traversed the step without incident. Thereafter, plaintiff P. A. Laning attempted to exit the building by taking the same path out that he had taken coming in. This time however, he tripped going up the step and was pitched forward and fell to the floor.

A circuit court's decision to grant or deny a motion for summary disposition is reviewed de novo. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003); *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A summary disposition motion made pursuant to MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In deciding such a motion, the court is to consider the entire record, including affidavits, depositions, pleadings, admissions, and other evidence submitted by the parties, in the light most favorable to the non-moving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This Court's review is limited to the

record on appeal, and allegations not supported by the record shall not be considered. *Hawkins v Murphy*, 222 Mich App 664, 670; 565 NW2d 674 (1997).

The open and obvious danger doctrine plays an integral role in defining a premises possessor's duty of care. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). A possessor of land owes a duty to invitees to protect them from an unreasonable risk of harm presented by a dangerous condition on the premises. *Id.* However, this duty is not without limits. Unless some special aspect of the condition presents an unreasonable risk of harm to a visitor, the possessor of land owes no duty to take precautions or issue warnings regarding those dangers which are known or obvious to an invitee. *Id.*; *White v Badalamenti*, 200 Mich App 434, 437; 505 NW2d 8 (1993).

In determining whether a danger is an open and obvious condition or whether special aspects render even an obvious condition "unreasonably dangerous," the court considers the circumstances as they would have appeared to a reasonably prudent person. *Mann v Shusteristic Enterprises, Inc*, 470 Mich 320, 329; 683 NW2d 573 (2004). Hence, the test is whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002). The danger of tripping and falling on steps is generally open and obvious. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995). "Only when there is something 'unusual' about the 'character, location, or surrounding conditions' of steps does the duty of a premises owner to exercise reasonable care come into play." *Spagnulo Rudds #2, Inc*, 221 Mich App 358, 360; 561 NW2d 500 (1997).

The photographs of the step submitted below support the presumption that this step presents an open and obvious danger. There is silver edging from one side of the step to the other, offering an indication to invitees that there may be a change in level between the showroom and the hallway. There is no door at this threshold, so it cannot be said that the step was concealed or obscured in some way. Further, by plaintiff P. A. Laning's own admission, his fall occurred while he was walking *up* the step, not down. The theoretical "optical illusion" of flatness which might occur where one is approaching a step down obscured by a uniform floor pattern and the lack of any other indicia of a change in level cannot be said to occur where one is approaching head-on the riser itself, and the level change is up, not down. A reasonably prudent person would be expected to appreciate the danger presented by a step upon approaching it from below.

Moreover, the fact that plaintiff P. A. Laning had successfully traversed this step on his way to the sales office establishes that he had actual knowledge of its existence and location, and thus could be expected to appreciate the danger of tripping as he approached it. See *Riddle v McLouth Steel Products*, 440 Mich 85, 96; 485 NW2d 676 (1992) (observing that "where the dangers are known to the invitee . . . , an invitor owes no duty to protector or warn . . . unless he should anticipate the harm despite [the invitee's] knowledge").

Plaintiffs also failed to establish the existence of extraordinary conditions relating to the "character," "location," and "conditions" surrounding the step sufficient to demonstrate that the step was unreasonably dangerous despite plaintiff's actual notice of the existence and location of the step itself. The photographs of the step do not reveal any special features that would distinguish this step and its surroundings from any other step that one might expect to find in a

building such as the one owned by defendant. In addition, P. K. Laning's diagrams of the location of the step reveal that the step is located in a part of the building where one might expect to find a step—namely, in the threshold of a doorway separating the showroom from the rest of the premises.

We hold, therefore, that under the facts as they appear in the record, the trial court's decision in granting summary disposition to the defendant was proper.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra